Secure Probes and Security Taps

Post 8/1976

THE LATEST SCRAP between Rep. John E. Moss (D-Calif.) and the administration over sensitive information has become much more tangled than it needs to be. The central issue is simple. Rep. Moss' subcommittee wants to learn, and the President does not want to divulge, the actual targets of some warrantless "national security" wiretaps. While granting that the material is acutely sensitive, Rep. Moss holds that agents for his panel need to see it in order to verify the administration's claim that the taps relate to foreign intelligence rather than improper domestic surveillance. The President has rejected this request, apparently out of a fear of leaks that might enable foreign governments to find out which phones are and are not being tapped.

Rep. Moss has complicated the dispute by attacking on two fronts at once. Before opening negotiations with the administration, the panel served a subpoena on AT&T for the warrantless-wiretap request letters submitted by the FBI. Those records specify the places or phones to be tapped, but do not indicate why. Thus while the letters would be extremely interesting to any number of people, their value to the Moss panel is limited. Indeed, Rep. Moss may well have used the AT&T subpoena as a flanking maneuver to pressure the administration into making the full justifications available.

At one point, Rep. Moss and the Justice Department reached an apparent accord under which staff representatives of the panel would be allowed to inspect a sampling of unexpurgated files. CIA Director George Bush objected to that, however, and President Ford rejected it, suggesting an alternative that Rep. Moss found unacceptable. Rep. Moss then pressed his demands against AT&T, causing the administration to seek—and District Judge Oliver Gasch to grant—an injunction barring the phone company from turning over its records.

While giving great weight to the President's national-security claim, Judge Gasch did grant that the subcommittee's interest was legitimate. What he found most persuasive was the administration's argument that the Moss panel could get enough information through the President's proposal. The defect in that route, however, is that it leaves the decision about disclosing names of wiretap targets to the Attorney General and the President. That reinforces the dangerous doctrine that the executive branch may unilaterally decide what information Congress may receive.

Rep. Moss is appealing the decision with the fervor that he usually brings to such disputes. The AT&T subpoena is not, however, the best ground on which to wage a full-scale court test of executive privilege. Instead of continuing to press for documents of somewhat marginal importance, the panel should reopen direct negotiations with the President. On reflection, Mr. Ford might well see more merit in the approach that he rejected at first glance. In other cases, agents for committees have been afforded access as a way of satisfying a panel's needs without compromising security. Indeed, this might be a useful element in new general procedures for the House. It makes particular sense in cases such as this in which legitimately sensitive information might be demanded by several committees from time to time. And that points to one more curious aspect of this case: the fact that it has not come up before. The Moss subcommittee's jurisdiction over wiretapping is a bit peripheral. Yet it is this panel that has demanded the ultimate data on national-security taps—and not the committees with central responsibility for intelligence oversight or wiretapping laws, though one might think they have at least an equal need to know.